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March 25, 1993

BY FEDERAL EXPRESS

Peter Raack, Esq.
Assistant Regional Counsel
United States Environmental
Protection Agency
Region IV
345 Courtland Street N.E.
Atlanta, GA 30365

Re: Carrier Air Conditioning Site, Collierville, TN

Dear Mr. Raack:

Please make this letter a part of the Administrative Record for the above-referenced site, as it contains Carrier Corporation's further response to three aspects of the EPA Unilateral Administrative Order (UAO), issued to Carrier Corporation, and dated February 11, 1993. These responses concern:

(1) the financial assurance provision, section XXIII.A. of the UAO. Though Carrier continues to reserve its legal position for reasons stated in my February 26, 1993 letter about this subject, it is providing additional information to EPA in the form of the recently-printed United Technologies Corporation 1992 Annual Report, together with an analysis of the pertinent provisions;

(2) an insurance certificate from Carrier concerning the policy limits for comprehensive general liability and automobile insurance, as provided by section XXIII.B of the UAO; and

(3) a copy of the notice concerning the property which has been recorded against the Carrier property, pursuant to section II.C. of the UAO.

A more detailed discussion of each of these items follows.



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I. Financial Assurance.

For reasons stated in prior correspondence, Carrier views EPA's legal position concerning financial assurance requirements as incorrect. However, as an accommodation to EPA, Carrier is providing a copy of the most recent annual report of United Technologies Corporation, for calendar year 1992 (the "1992 Annual Report").

United Technologies is one of the largest manufacturing companies in the United States, and ranks in the Fortune 50. It had sales in 1992 of \$21,641,000,000.00. 1992 Annual Report, p. 5. This annual report is prepared in order to satisfy the stringent financial and accounting standards imposed on publicly-traded companies by the U.S. Securities and Exchange Commission.

As you are aware, Carrier is a wholly-owned subsidiary of UTC, and has its financial results combined with other UTC subsidiaries and divisions in this report. Carrier is the largest manufacturer in the world of heating, ventilating, and air conditioning (HVAC) equipment. 1991 Annual Report, p. 7. In this capacity, Carrier had sales in 1991 of \$3.8 billion (Id., p. 24), a figure which increased to \$4.3 billion in 1992. 1992 Annual Report, p. 20. In 1992, Carrier accounted for 49% of the revenues of the building systems sector of UTC, up from 47% in 1991. Id.

Building system operating profits increased \$138 million in 1992, which is a 42% increase over 1991. 1992 Annual Report, p. 22.

The 1992 increase is primarily a result of increased air conditioning business volume, most notably in the North American region and the transportation refrigeration business, as well as a more profitable mix of sales.

Id. (emphasis supplied).

As noted in my February 26, 1993 letter to you concerning financial assurance, Carrier has invested heavily in research and development to accommodate the changeover in air conditioning equipment from CFC's to non-CFC's. 1991 Annual Report, p. 17. Carrier invested another \$125 million in technology development in 1992; 1992 Annual Report, p. 12. As a result of these investments, Carrier appears to be materially ahead of its competitors in compressor technology as a result. Id. Thus in

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1992, Carrier opened a scroll compressor manufacturing facility in Arkansas, and expects to be producing 750,000 scroll compressor units by 1994. Id.

These models tend to be smaller than earlier models, are easier and less costly to manufacture, and take up less space when installed.

That strategy of miniaturizing its products has been paying off. Carrier significantly increased sales and profits in the North American residential marketplace in 1992, largely as a result of strong customer acceptance of its new, compact Cobra line of condensing units for air conditioning systems.

Id.

Carrier reduced its overhead substantially by closing several U.S. plants in 1991, including one in Knoxville, Tennessee, as well as several overseas plants. 1991 Annual Report, p. 23. These efforts resulted in increased productivity, reduced floor-space requirements, reduced work-force levels, and reduced work-in-process inventory. 1992 Annual Report, p. 7. Put simply, in 1992 Carrier produced more but used fewer workers and plants to do so. Id.

UTC addressed environmental remediation activities and costs in detail in 1991, taking a \$256 million pre-tax charge in the fourth quarter to reflect such costs. 1991 Annual Report, p. 23. The 1992 annual report discusses environmental matters further, reporting the expenditure for remediation activities of \$82 million in 1992, of \$57 million in 1991, and of \$48 million in 1990. 1992 Annual Report, p. 25. These expenditures are expected to range between \$100 million and \$150 million in each of the next two years. Id. The 1992 Annual Report goes on to state that:

The nature of the above matters makes it difficult to estimate the exact timing and ultimate amount of future environmental expenditures. Also, the Corporation has instituted legal proceedings against its insurers asserting insurance coverage for remediation and related expenditures. These proceedings are expected to take several years. No prediction can be made as to the outcome of these proceedings. The above uncertainties notwithstanding, the Corporation believes that expenditures

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necessary to comply with present regulations governing environmental protection will not have a material effect upon its capital expenditures, competitive position, financial position or results of operation.

Id. (emphasis supplied). The report goes on to state that UTC is a PRP at 79 Federal Superfund sites, many of which relate to formerly-owned businesses.

The Corporation's share of future remediation and related expenditures at these sites is estimated to be in the range of \$100 - \$150 million and adequate reserves have been established. In addition, the Corporation has [also] adequately provided for its share of future remediation and related expenditures at other known sites for which it may have some remediation responsibility.

Id., p. 25. (emphasis supplied).

The accounting principles for these estimates are stated in note 1 to the financial statement:

Environmental Activities: Provisions for environmental remediation activities are recorded when assessments are made, remedial efforts are probable and related amounts can be reasonably estimated; potential insurance reimbursements are not recorded. The Corporation periodically assesses its environmental liabilities through reviews of contractual commitments, site assessments, feasibility studies and formal remedial design and action plans.

Id., p. 32 (emphasis supplied). Thus, the outcome of Carrier's pending insurance litigation can have no adverse effect on the figures shown in the annual report, and the statements based on them about Carrier's financial capacity to carry out the remedial work at the Collierville site.

Carrier believes that this financial information should be adequate to assure EPA and others that there is no realistic basis for concern that Carrier will be financially unable to perform the remedial work specified in the Record of Decision (ROD). That work, estimated by the ROD to cost between \$5.7 million and \$7.9 million is less than 2/10 of one percent of Carrier's 1992 revenues of \$4.3 billion. In addition, much of this work has already been completed, including the installation of the treatment system at the City of Collierville wells (at

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Carrier's expense) and the soil vapor extraction (SVE) system in the north lagoon area. This leaves substantially less than \$7.9 million in work left to be done, and much of this is long-term operation and maintenance over as much as twenty years time. It seems evident that EPA has little concern about Carrier's ability to perform this work; otherwise EPA would have issued an order to the City of Collierville as well as to Carrier, something EPA did not do here.

We believe that this information should be satisfactory to EPA under any reasonable construction of the term "financial assurance". If, however, you should have questions about this matter, or desire specific additional information, please let me know.

II. Insurance Certificate.

Pursuant to section XXIII.B. of the UAO, Carrier is submitting for the Administrative Record a certificate of insurance showing its comprehensive general liability and auto insurance coverage for the site to be \$1,000,000, combined single limit. As we discussed at our meeting in Atlanta last month, this certificate satisfies the requirements of the UAO concerning Carrier's insurance. Please place the original certificate, which shows EPA as the certificate holder, into the Administrative Record. As noted in prior correspondence, Carrier is reserving its legal position on this issue, specifically that EPA does not have the authority under section 106 of CERCLA to require such insurance coverage, or statements about it.

III. Recording of Notice of Pendency of UAO.

Pursuant to section II.C. of the UAO, Carrier has undertaken to record notice of the UAO with respect to its property, the 135 acre tract which corresponds to the National Priority List definition of the site. We are informed by local counsel that in order to record documents in the title records, the signatures must be notarized. As the Regional Administrator's signature on the UAO is not original and is not notarized, the UAO as presented to Carrier is not in a form which can be recorded in the title records.

Carrier has nonetheless recorded notice of the UAO in the form enclosed with this letter. We have enclosed a notarized copy of that form, which was recorded on March 10 in the appropriate land records. Like a lis pendens which might be

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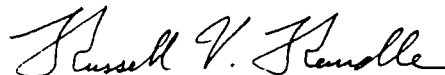
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filed against real estate to place other parties on notice of litigation affecting the title-holder of real property, this notice informs anyone reviewing the title records of the UAO, the authority under which the UAO was issued, the agency office issuing it, the docket number, and the location where it can be obtained. Please place this original document in the Administrative Record for this site.

For reasons stated in prior correspondence, Carrier does not believe EPA has the authority under CERCLA to require the recording of anything concerning the property, much less a 44 page order (with voluminous attachments) incomprehensible to the ordinary citizen or ordinary real estate practitioner. Nonetheless, Carrier has sought to accommodate EPA by filing this notice in a form acceptable to the register of deeds, and understandable by the ordinary citizen.

I hope the information and documents transmitted with this letter are satisfactory and understandable. Please call if you should have any questions. Thank you for your courtesy in this matter.

Sincerely,



Patton, Boggs & Blow
Counsel to Carrier Corporation
By Russell V. Randle

Enclosures: (1) 1992 UTC Annual Report
(2) Insurance Certificate
(3) Recorded Notice of Unilateral
Administrative Order

cc: Ms. Beth Brown, RPM